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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,223	06/30/2003	Leslie R. Sherrill	003544.00010	1776

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 10/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/608,223

Applicant(s)

SHERRILL ET AL.

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 June 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-21 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,584,938. Although the conflicting claims are not identical, they are not patentably distinct from each other because they claim substantially the same subject matter.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 404 and 406 (Fig. 4). A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: in paragraph [23], the word –in—should be inserted before the phrase “an elongate flavor member”; in paragraph [54], line 10, “simple” should be –simply--; in paragraph [60], line 2, the word –and—should be inserted after “toy”; in paragraph 61, line 7, “solidifying” should be –solidify--; in paragraph [63], line 5, the word –is—should be inserted before the phrase “more suitable”; and in paragraph [65], line 8, the phrase “to reveal to satisfy” is unclear.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 1 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Arnold et al. (6,360,696). Arnold et al. disclose an animal chew toy which is made using a composite of gelatin, plasticizer (preferably glycerin), water, and additional additives such as flavorings, nutrients and minerals which are health affecting additives, preservatives, and digestible filler material including edible bits or pieces of flavored meat product, and bits of animal hide.

7. Claims 8 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Perlberg et al. (6,223,693). Perlberg et al. disclose an animal chew toy comprising a composite of humectant such as glycerin, water, edible binders such as gelatin, and chopped bits of rawhide, wherein the ingredients are combined and formed into a desired shape by extrusion or molding; the chew comprises a plurality of discrete, spaced flavor pieces (i.e., chopped rawhide) within a solidified animal hide granulate paste (i.e., the final product) (col. 3, lines 54-56; col. 4, lines 51-56); the chew is cylindrical shaped (see Figure 4).

8. Claims 1, 6, 7, 8, 9, 12, 13, 15 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Gellman et al. (4,743,458). Gellman et al. disclose an animal chew biscuit and method of making said biscuit having meat and meat-by-product particles distributed uniformly throughout the biscuit; wherein the biscuit comprises a blend of the meat, dough, water, humectant, and fat; wherein the dough composite comprises 0.5-10 percent of fat, 5-15 percent of glycerin humectant, and 40-50 percent wheat flour; wherein the meat and meat-by-products can be in the form of specs, flakes, chunks, chips, granules and the like (col. 4, lines 57-59); wherein the term "meat-by-product" includes skins (i.e., hide) (col. 6, lines 29-37); wherein the preferred meat and/or by-product particles are of dehydrated cured meat referred to as jerky (col. 6, lines 47-56); wherein by nature of the shaped biscuit being round, T-bone, chop or steak-like, square, triangular, animal-shaped, and the like (which is considered to include cylindrical), (col. 4, lines 51-54) there will be a visible exterior surface and interior with some of the pieces located on the visible exterior and some located in the interior; and wherein the dough ingredients include flavorings, vitamins and minerals which are considered to be health affecting additives.

9. Claims 1 and 16-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Lehn et al. (4,702,929). Lehn et al. disclose a method for manufacturing munchies wherein pieces of animal hides are mixed with starch product, extruded into desired shapes, and dried through heating zones and wherein discrete pieces of flavor product such as fishmeal may be added to the composite (col. 2, lines 36-37).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1-5, 10, 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. in view of Arnold. Perlberg et al. disclose an animal chew toy and method of making said toy comprising a composite of humectant such as glycerin, water, edible binders such as gelatin, and chopped bits of rawhide, wherein the ingredients are combined and formed into a desired shape by extrusion or molding. It is not disclosed, however, that pieces of flavor product or other additives are dispersed in the composite of Perlberg et al. Arnold et al. teach an animal chew toy comprising a composite of gelatin, plasticizer (preferably glycerin), water, and additional additives such as flavorings, nutrients and minerals which are health affecting additives, preservatives, and digestible filler material including edible bits or pieces of flavored meat product, and bits of animal hide. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add flavor meat product as taught by Arnold et al. to the Perlberg et al. composite in order to provide an additional means of attracting the animal to the chew toy. That the bits of meat of Arnold et al. are

chunks is considered to be obvious to one of ordinary skill in the art depending on the desired density of the chew, how visually apparent one wished to make the meat attractant, or depending upon the size of the animal for which the chew toy was designed (i.e., a larger animal might desire more meat chunks, whereas a smaller animal could possibly only handle bit size meat product). As to claim 10, Perlberg et al. also teach percentage ranges of the gelatin, rawhide flour, glycerin to be in the composite is 4-20%, 25-65%, and 10-55%, respectively, therefore to formulate the product to contain the claimed ranges would have been obvious to one having ordinary skill in the art at the time the invention was made since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

12. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. in view of Arnold et al. as applied to claim 10 above, and further in view of Lee (5,456,933). Although the combination of Perlberg et al. and Arnold et al. disclose a pet chew comprised of a composite of gelatin, plasticizer (preferably glycerin), water, and additional additives such as flavorings, nutrients and minerals which are health affecting additives, preservatives, and digestible filler material including edible bits or pieces of flavored meat product, and bits of animal hide, it is not disclosed that there is wheat germ in the composite. Lee teaches a shaped food piece for pets which includes wheat germ as a source of protein (col. 4, lines 16-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use wheat germ,

as taught by Lee, in the composite of the combination of Perlberg and Arnold in order to provide more sources nutritional supplement for the chew.

13. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gellman et al. Although Gellman et al. disclose an animal chew biscuit containing meat and by-products which can include jerky and hide pieces, respectively, the size of the pieces relative to one another is not disclosed. To provide that the jerky pieces are one to thirty times the average size of the hide bits would have been obvious to one of ordinary skill in the art wishing to make the biscuit more chewable, palatable, and easier to digest for the animal.

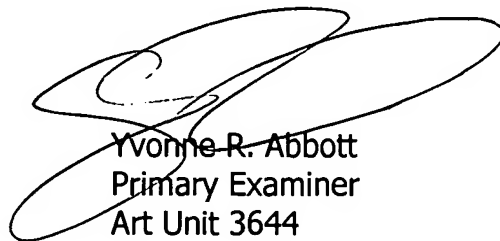
14. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Perlberg et al. in view of Arnold as applied to claim 18 above, and further in view of Ikeuchi et al. (4,692,341). Although the combination of Perlberg et al. and Arnold teach a method of making an animal chew comprising a composite of hide bits and flavor pieces, wherein Perlberg et al. discloses that the mixture can be formed into desired shapes by molding or other suitable methods, it is not specifically disclosed that the composite is heated. Ikeuchi et al. teach a method for producing a food product wherein the food product is composite or paste is filled into a mold and then heated to solidify the paste into the desired shape. It would have been obvious to one of ordinary skill in the art at the time the invention was made to heat the composite of the combination of Perlberg et al. and Arnold in view of the teaching of Ikeuchi et al., and since it is well known that heating

or baking is a suitable method of forming solid food shapes, and further to obtain desired moisture levels in products thereby preventing mold.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703)305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Yvonne R. Abbott
Primary Examiner
Art Unit 3644

10/1/04